

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
Petition to Make Housekeeping Revisions and a)	Docket No. 14-0316
Compliance Change to filed Rate Formula.)	

INITIAL BRIEF OF COMMONWEALTH EDISON COMPANY

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Commonwealth Edison Company (“ComEd”), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”) and the scheduling order of the Administrative Law Judges, submits this Initial Brief.

The Commission’s August 19, 2014, Interim Order established a second phase (“Phase 2”) of this Docket to address two subjects: (1) the definition of “formula rate structure and protocols” as it is used in Section 16-108.5 “as it applies to ComEd”; and (2) dependent upon the Commission’s decision on the first issue, a determination of whether to change any rate formula Schedules or Appendices to reflect the change in ComEd’s depreciation rates between the reconciliation year in the pending 2014 formula rate update (“FRU”) docket (2013) and the filing year (2014). Interim Order at 5.

The Commission established ComEd’s formula rate under the Energy Infrastructure Modernization Act (“EIMA”)¹ in ComEd’s 2011 formula rate case. *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) (“11-0721 Order”) and (Order on Rehearing Oct. 3, 2012) (“11-0721 Rehearing Order”). The formula rate “structure,” as that term is used in Section 16-108.5(c) and (d) of the Act as applied to ComEd, includes all the Schedules and

¹ “EIMA” refers to the Energy Infrastructure Modernization Act, Public Act (“PA”) 97-0616, as amended by PA 97-0646 and PA 98-0015, and the changes and additions it made to the Public Utilities Act, 220 ILCS Act 5 (the “Act”).

Appendices that comprise the Commission-approved formula rate, not just the two summary (roll-up) Schedules (Sch FR A-1 and Sch FR A-1 REC). The Commission has the authority to change the formula rate structure, but it may do so only in a separate “Article IX” docket, and cannot do so in the annual formula rate update (FRU) dockets. To rule otherwise would jeopardize the certainty, specificity, and transparency that EIMA requires for a formula rate.

With regard to the second issue in Phase 2, the Commission should reject Staff’s position that ComEd’s ICC-approved formula rate should be modified such that the depreciation rates in ComEd’s depreciation study filed in January 2014 would be applied to 2013 plant as well as to 2014 projected plant additions, for several reasons, including because Staff’s position is inconsistent with EIMA’s direction that the Federal Energy Regulatory Commission (“FERC”) Form 1 be the foundation of the formula rate.

I. BACKGROUND

On April 16, 2014, ComEd filed its third annual delivery service formula rate update, which became ICC Docket No. 14-0312, and ComEd simultaneously filed its “Verified Petition to Make a Housekeeping Revision and a Compliance Change to Performance Based Delivery Service Filed Rate Formula” (“Petition”), leading to the instant Docket. The Petition initiated the present docket for the purpose of making certain changes (a housekeeping change and a compliance change) to ComEd’s performance-based formula rate, Rate DSPP – Delivery Service Pricing and Performance (“Rate DSPP”).² Rate DSPP was established by the Commission in the 11-0721 Order, as modified by the 11-0721 Rehearing Order.³

² Because ComEd is a participating utility under EIMA, it is permitted to recover its delivery services costs through a formula rate. 220 ILCS 5/16-108.5(c).

³ The Commission approved tariff and formula rate has been modified in limited respects by subsequent orders in separate Article IX dockets, as discussed later in this Initial Brief.

During ICC Docket No. 11-0721, the Commission also first considered the issue of how to define the formula rate structure for ComEd. While the Commission ruled on what schedules to attach to the Order itself (“traditional” revenue requirement schedules), and which formula rate Schedules and Appendices to set forth in full in Rate DSPP and which to include as part of the compliance filing, the Commission was not required to and did not rule on which Schedules and Appendices constituted the formula rate structure. The Commission ultimately directed that a rulemaking should commence, because it would “add clarity to the reconciliations that will take place pursuant to this statute, which should provide greater clarity for utilities, ratepayers and Commission Staff.” Docket No. 11-0721 Order at 153. In doing so, the Commission rejected Staff’s claim that a rulemaking was premature. “Staff overlooks the fact that the sooner the rulemaking takes place, the sooner all involved in the rulemaking will familiarize themselves with what formula rate will entail.” *Id.*

In ComEd’s first FRU, similar questions were raised about use of the formula rate Schedules and Appendices in testimony and as attachments to final Orders, but again, the Commission did not rule on which Schedules and Appendices constituted the formula rate structure, and, instead, assured the parties that “there will be a rulemaking in which ComEd and other interested parties are encouraged to address this and other relevant issues regarding future formula rate filings.” *Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) (“12-0321 Order”) at 105.

Unfortunately, a rulemaking was never initiated, and the desired “clarity” never was achieved. This has resulted in challenges by Staff and intervenors to different aspects of ComEd’s formula rate in the annual formula rate updates, challenges that were to be kept out of the FRUs, and instead addressed in Article IX dockets, under EIMA.

ComEd's Petition that originated the instant Docket sought approval of: (1) a housekeeping (clarifying) revision to ComEd's Commission-approved formula rate, and (2) a compliance change (a set of conforming revisions) to the formula rate to comply with the Commission's final Order in ComEd's 2013 FRU, ICC Docket No. 13-0318. The compliance change effectuated the Commission's direction that ComEd add a second cash working capital ("CWC") calculation to the rate base calculations in the rate formula. *See Commonwealth Edison Co.*, Docket No. 13-0318 (Order Dec. 19, 2013), at 18. The Commission's final Order noted the possibility that the compliance change would need to be made in a separate Article IX filing, such as this Docket. *Id.* at 17-18. ComEd's Petition was uncontested, and the August 19, 2014, Interim Order correctly granted the relief requested by the Petition.

The Interim Order, however, also adopted Staff's proposal that the Commission not open the long-contemplated rulemaking but rather "reopen" the record in this narrow housekeeping Docket for the purpose of broadening the scope and taking evidence and argument in Phase 2 on: (1) the definition of "formula rate structure and protocols" as it is used in Section 16-108.5 "as it applies to ComEd"; and (2) dependent upon the Commission's decision on the first issue, a determination of whether to change any rate formula Schedules or Appendices to reflect the change in ComEd's depreciation rates between the reconciliation year in the 2014 FRU (2013) and the filing year (2014). Interim Order at 5.

Despite ComEd's substantial due process concerns about how the statutory issue has been handled in a separate proceeding involving Ameren, ICC Docket Nos. 13-0501/13-0517 (Order Aug. 19, 2014), which concerns ComEd has expressed in prior motions and briefing in that proceeding and in the instant Docket, ComEd takes some solace here that the Commission has indicated that the results of that Ameren proceeding will not necessarily apply to ComEd, and in

fact the Commission will analyze the formula rate definition issue “**as it applies to ComEd.**” Interim Order at 5 (emphasis added).⁴ Indeed, fundamental legal principles and protections require that ComEd be provided an opportunity to be heard *before* the Commission rules on the threshold issue of what formula rate “structure” means for ComEd. *See, e.g., Quantum Pipeline Co. v. Illinois Commerce Comm’n*, 304 Ill. App. 3d 310, 709 N.E.2d 950 (3d Dist. 1999) (Commission denied procedural due process by not giving notice and opportunity to be heard in rescission of certificate).

As discussed below, ComEd urges the Commission to reject on-going efforts to arbitrarily define ComEd’s formula rate that result in annual litigation of formula issues in FRUs. If the Commission analyzes the formula rate definitional issue as it applies to ComEd, it should conclude that ComEd’s formula rate structure consists not only of summary Schedules Sch FR A-1 and Sch FR A-1 REC, but also of the entire body of Schedules and Appendices expressly incorporated by reference in Rate DSPP, and filed in numerous compliance filings. *See Brinkman Reb., ComEd Ex. 2.0*, at 14 (discussing material differences between ComEd and Ameren tariffs and Commission response thereto). There is no principled basis for defining ComEd’s formula rate structure as merely the two summary schedules, Sch FR A-1 and Sch FR A-1 REC, to the exclusion of the other Schedules and Appendices.

The Commission also should approve ComEd’s continued use of its current approved formula rate methodology to calculate depreciation for purposes of the rates being set for the Initial Rate Year in ComEd’s formula rate update cases. This calculation was litigated in ICC Docket No. 11-0721 and a methodology was agreed upon. There is simply no need to change

⁴ “The concept of public regulation includes of necessity the philosophy that the commission shall have the power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even same situation in a previous proceeding.” (*Mississippi River Fuel Corp. v. Ill. Commerce Comm’n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953)). The Commission’s orders thus are not *res judicata*, and in fact the Commission has reached different outcomes for ComEd and Ameren on similar formula rate issues.

this calculation now, and such a change would be inconsistent with the FERC Form 1 foundation of the formula rate.

II. FORMULA RATE “STRUCTURE” UNDER EIMA

Staff takes the position here that the Commission should define formula rate “structure” to mean ComEd’s Rate DSPP, Tariff Sheet Nos. 417-437, which contain full recitation of summary Schedules Sch FR A-1 and FR A-1 REC, and thus that only changes to Sch FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing. Ebrey Dir., Staff Ex. 1.0, at 2. Staff’s position should be rejected as it is contrary to EIMA and is not supported by the Commission’s prior rulings on ComEd’s formula rate.⁵

A. Definition of Formula Rate “Structure” Under Section 16-108.5

Section 16-108.5(c) of the Act states, in part:

A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year.... [Emphasis added]

Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act.

Further, Section 16-108.5(d)(3) states in part:

The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section.

⁵ Staff also takes the position that the Commission may change the approved formula rate “protocols” only in a separate Article IX Docket, and only as consistent with EIMA, and Staff indicates that its understanding is that the “protocols” are the components of the formula rate that address the items in Section 16-108.5(c)(4)(A) through (I). Ebrey Dir., Staff Ex. 1.0, at 4, 6. ComEd does not disagree with that portion of Staff’s position. Thus, regardless of the Commission’s decision on the formula rate “structure” definition as applied to ComEd, it is uncontested that the protocols can be changed only in a separate Article IX docket.

EIMA ratemaking allows utilities to recover their prudent and reasonable costs, to ensure that a “participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and the [EIMA ratemaking and reconciliation] process” 220 ILCS 5/16-108.5(b). That assurance is not just an obligation owed to utilities; it is also for the good of customers and the State who will reap lasting benefits from the investment EIMA is intended to facilitate.

Unlike the annually updated input data (*e.g.*, in ICC Docket No. 14-0312), the formula itself is not annually revised or updated under EIMA. That is, the specifics of the rate calculation and the identification of the specific inputs used to conduct it are found in the formula rate itself and are not a subject of an annual formula rate update proceeding, but rather a separate Section 9-201 proceeding.

Therefore, the rate formula under EIMA should provide certainty, specificity and transparency to allow for a set structure and protocols, with annual updates to the rate formula inputs using actual FERC Form 1 data as a foundation. As discussed below, ComEd’s rate formula structure, made up of all of the Schedules and Appendices incorporated in Rate DSPP, is consistent with EIMA and the company’s annual update filings provide all of the necessary data and documentation required by the formula rate structure and protocols expressly set forth in EIMA.

B. Relevant History of ComEd’s Formula Rate

In ComEd’s first formula rate case under EIMA, ICC Docket No. 11-0721, the basis for the Commission’s including only two rate formula schedules in Rate DSPP was a proposal by an Illinois Industrial Energy Consumers (“IIEC”) witness to simplify the tariff because he thought it

might make it more understandable to customers. Brinkman Dir., ComEd Ex. 1.0, at 12. The grounds were not based on any Commission finding or ruling regarding what is the scope of the rate formula structure and protocols. *Id.* The Commission's final Order (ICC Docket No. 11-0721, Order at 153) also adopted IIEC's proposal that a rulemaking be held in the future regarding the definition of formula rate structure and protocols. Clearly, adopting the IIEC's truncated version of ComEd's formula rate tariff, which lists and incorporates all of the Schedules and Appendices but sets forth in full only the two summary Schedules, was not a ruling on what constitutes ComEd's formula rate structure and protocols.

In the first formula rate update, ICC Docket No. 12-0321, the Commission addressed whether to attached a "populated" formula rate as an appendix to the final Order, or to use the "traditional" schedules. The Commission's decision again was not a decision on what constitutes the formula rate structure and protocols, as can be seen both from the ruling itself and also from the fact that the Commission again indicated it was going to initiate the rulemaking promised in ICC Docket No. 11-0721. Brinkman Reb., ComEd Ex. 2.0, at 7-9.

Subsequent to ICC Docket No. 11-0721, the Commission has approved changes to ComEd's rate formula in separate Article IX dockets. In June 2013, the Commission approved a limited number of "housekeeping" and technical corrections to ComEd's rate formula in ICC Docket No. 13-0339, acting on a separate Section 9-201 filing. Also, in June 2013, the Commission approved an update to ComEd's rate formula and tariffs to comply with the adoption of Public Act 98-0015 (*Commonwealth Edison Co.*, ICC Docket No. 13-0386 (Order June 5, 2013)). The latter filing included more substantial changes to the rate formula as a result of the issues addressed by the General Assembly. In that docket, the Commission held that ComEd's formula "rate sheets, and the revenue requirement calculations filed with and

supporting them, are consistent with the provisions of Public Act 98-15” *Commonwealth Edison Co.*, ICC Docket No. 13-0386 (Order June 5, 2013) at 3, 4. The Commission ordered into effect ComEd’s filed rate schedule sheets and approved the resulting revenue requirement modifications. *Id.*

Similarly, the Commission has ruled in a formula rate update proceeding that changes to ComEd’s formula in a FRU are improper. In ICC Docket No. 13-0318, the Commission ruled that three contested issues, Deferred Income Taxes on Reconciliation Balance, Weighted Average Cost of Capital (“WACC”) Gross-Up, and Rate Base for Return On Equity (“ROE”) Collar Calculation, were beyond the scope of the annual update and reconciliation proceeding. The December 18, 2013, Order (at 63) states in part:

The proposal to consider and change the structure and protocols of ComEd’s formula rate related to the calculation of [deferred income taxes, the calculation of WACC, the ROE Collar Calculation] are beyond the scope of this Section 16-108.5 (d) annual update and reconciliation proceeding.

Importantly, those three contested issues in ICC Docket No. 13-0318 required changes to ComEd’s related Schedules and Appendices, not just rate formula summary Schedules Sch FR A-1 and Sch FR A-1 REC. In fact, none of the three issues changed Sch FR A-1 or Sch FR A-1 REC. All three changed various other Schedules and Appendices within ComEd’s rate formula. This Order indicates that the Commission recognized that the formula is not simply defined as Sch FR A-1 and Sch FR A-1 REC. All three issues were ultimately addressed in ICC Docket No. 13-0553, a follow-on proceeding initiated “pursuant to Section 10-113(a) of the Public Utilities Act (220 ILCS 5/10-113(a)) to determine whether the company has complied with Public Act 98-[00]15.” *Commonwealth Edison Co.*, ICC Docket No. 13-0553 (Order October 2, 2013) at 3. ComEd ultimately made related rate formula changes pursuant to the Commission’s

November 26, 2013, final Order in ICC Docket No. 13-0553, in its compliance filing dated December 5, 2013.

Further, the Commission did not make a change to ComEd's rate formula with respect to adding a second cash working capital (CWC) calculation in ICC Docket No. 13-0318. In that proceeding, the Commission found that the existing CWC calculation based on the reconciliation year should continue to be used in the calculation of the reconciliation year rate base, but that a second CWC calculation, one based on the filing year, should be used in the calculation of the filing year rate base. *Commonwealth Edison Co.*, ICC Docket No. 13-0318 (Order Dec. 18, 2013) at 18. However, the Commission also recognized that: "Staff, in an effort to narrow the issues for the purposes of this docket, but without conceding the issue that the Company should have a CWC calculation for the filing year based on the filing year revenue requirement as Staff has proposed, Staff will not contest the Company's position that changes to the CWC schedules should be made outside of this proceeding." *Id.* at 17. Accordingly, ComEd filed the "housekeeping" Petition that initiated the instant Docket primarily so that the Commission could approve the addition of the second CWC calculation in an Article IX docket (while preserving ComEd's legal position). ComEd's filing in the current FRU, ICC Docket No. 14-0312, reflected the second CWC calculation, noting the ICC Docket No. 13-0318 finding and requesting the formula change via the "housekeeping filing", *i.e.*, Phase 1 of the instant proceeding. Brinkman Dir., ComEd Ex. 1.0, at 12 (referencing ICC Docket No. 14-0312, ComEd Ex. 3.0, at 19).

C. ComEd's Formula Rate Complies with EIMA and Past ICC Decisions

ComEd's current Commission-approved formula rate governs the calculation of ComEd's 2015 Initial and 2013 Reconciliation Revenue Requirements, and any adjustment

attributable to the “ROE Collar” in ComEd’s pending FRU. ComEd’s rate formula is not merely a general outline or description of calculations, but itself “specif[ies] the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility’s actual costs to be recovered during the applicable rate year” 220 ILCS 5/16-108.5(c). The approved rate formula defines – mathematically and in narrative detail – how the revenue requirements and the ROE Collar adjustment (if any) are calculated and what input data goes into those calculations.⁶

Specifically, ComEd’s Rate DSPP, attached as ComEd Ex. 1.01 to Ms. Brinkman’s Direct testimony (ComEd Ex. 1.0), establishes and incorporates the formulae that determine the delivery service revenue requirement and the resulting delivery service charges to customers, as well as the cost components that form the inputs to those formulae. It does so (in combination with the incorporated Schedules and Appendices) with sufficient specificity for the process to operate in a standardized and transparent manner and with annually updated inputs that reflect ComEd’s actual costs to be recovered during the applicable year. Rate DSPP includes the detailed view of Sch FR A-1 and Sch FR A-1 REC, which effectively are executive summary schedules of ComEd’s rate formula, to show the final rolled up revenue requirement.⁷ But equally important and necessary, Rate DSPP also specifies and incorporates by explicit reference the other Schedules and Appendices in ComEd’s rate formula that develop the data rolled up into Sch FR A-1 and Sch FR A-1 REC. Brinkman Dir., ComEd Ex. 1.0, at 7-9.

⁶ The formula calculates ComEd’s 2015 Initial Rate Year Revenue Requirement using 2013 actual data (for which the FERC Form 1 for 2013 is the foundation) and certain 2014 projections, and uses the same formula to calculate ComEd’s 2013 Reconciliation Revenue Requirement from the actual 2013 costs that are now available. The ROE Collar is also calculated based on actual 2013 data. 220 ILCS 5/16-108.5(d).

⁷ ComEd referred to Sch FR A-1 as a “summary” schedule in its direct testimony in the 2011 formula rate case and indicated the same was true of Sch FR A-1 REC. ComEd Cross Ex. 1 at 11.

ComEd's Schedules and Appendices are necessary to achieve the standardization, transparency, and certainty called for by EIMA. For example, in order to use data from ComEd's FERC Form 1 in a manner that is transparent, the rate formula must specify what data to use. Further, for the data to be applied in a standardized manner, it must be set out and defined in the formula. This detail and transparency cannot be seen on Sch FR A-1 and Sch FR A-1 REC alone. The other Schedules and Appendices provide this transparency as they contain the references to the FERC Form 1 and to the specific workpapers that contain the source input data. Sch FR A-1 and Sch FR A-1 REC do not contain specific cost inputs, but rather provide a high level summary of ComEd's Initial Rate Year, Reconciliation Year, and Rate Year Net Revenue Requirements. Brinkman Dir., ComEd Ex. 1.0, at 5-9.

D. Staff's Proposed Definition of Formula Rate "Structure" Is Arbitrary and Omits Essential Schedules and Appendices

Staff witness Ms. Ebrey proposes to arbitrarily and narrowly define ComEd's formula rate structure and to make adjustments that are counter to EIMA and to the established formula approved by the Commission. Ms. Ebrey would have the Commission define ComEd's formula rate as merely the two summary schedules, Sch FR A-1 and Sch FR A-1 REC, to the exclusion of the other Schedules and Appendices that are expressly referenced in Rate DSPP. Her proposals are inconsistent with ComEd's complete Commission-approved rate formula and would allow calculation of revenue requirement components in a different way than the formula allows. Specifically, as discussed further in Section III below, Ms. Ebrey proposes a change in the way that depreciation is calculated in the rate formula in response to ComEd's latest (2014) depreciation study. Ebrey Reb., Staff Ex. 1.0, 9-10.

Ironically, Staff's position complicates, not simplifies, the annual FRU process, and results in the expenditure of more, not less, resources by the utility, Staff, and intervenors. By

taking complex arguments about the formula structure and protocols out of the annual updates, the detail in the tariff serves to preserve resources and reduce the workload of the parties and the Commission. The debate that should occur in annual update proceedings should center on the specific inputs; there should not be inefficient, costly, and uncertain re-litigation of the formula structure and protocols themselves year-after-year, which defeats the express language and intent of EIMA. But that is what will result from the adoption of Staff's position. Staff's asserting that the formula rate structure is only Sch FR A-1 and Sch FR A-1 REC is like saying that the blueprints to build a home are not the full set of drawings and plans, containing specific floor-by-floor and room-by-room detail, but rather the cover page alone, which shows what the finished home will look like upon completion.

There simply is no basis for concluding that ComEd's rate formula structure is anything other than all of the Schedules and Appendices incorporated in Rate DSPP, which collectively provide the certainty, standardization, and transparency required by EIMA. Sch FR A-1 and Sch FR A-1 REC present the revenue requirement at a summary level. They do not provide the certainty, standardization, and transparency of the other Schedules and Appendices in the rate formula spreadsheet. *See* Rate DSPP, 1st Revised Sheet Nos. 423-425 (in ComEd Ex. 1.01); Brinkman Dir., ComEd Ex. 1.0, at 13-14. It is highly unlikely that someone could determine how the revenue requirements are calculated (or discern many of the rulings made by the Commission regarding the rate formula) if they simply had the tariff in one hand and the FERC Form 1 in the other hand. Brinkman Dir., ComEd Ex. 1.0, at 12-13. Sch FR A-1 and Sch FR A-1 REC do not directly refer to any specific data in the FERC Form 1. To discern how the FERC Form 1 data feeds into the overall revenue requirement, one would have to review the other Schedules and Appendices, which drive Sch FR A-1 and Sch FR A-1 REC, and which also

are listed in Rate DSPP (1st Revised Sheet No. 426). The Schedules and Appendices also incorporate data in work papers listed in Rate DSPP (2nd Revised Sheet No. 427). Looking solely at the tariff and Sch FR A-1 and Sch FR A-1 REC, as Staff proposes for the purpose of determining how much of the formula rate is in play in an FRU, does not set forth the entirety of ComEd's rate formula structure and certainly does not provide the certainty, standardization, and transparency that EIMA requires.

III. CALCULATION OF DEPRECIATION ON PROJECTED PLANT ADDITIONS

In order to set rates as Staff proposes, Staff takes the position that the changes that would have to be made to Schedules other than Sch FR A-1 and Sch FR A-1 REC in order to apply the new depreciation rates filed in the FRU filing year to the reconciliation year data can be approved by the Commission in the pending FRU and do not have to be approved in an Article IX proceeding. Ebrey Dir., Staff Ex. 1.0, at 2-3. Given the definition of formula rate “structure” and “protocols” set forth in EIMA and in the past Commission decisions discussed above, ComEd contends that only the instant Article IX docket (or another Article IX docket) would be the proper docket to consider Staff’s proposed change to ComEd’s calculation of depreciation on projected plant additions. As explained below, however, it is inappropriate and unnecessary to effect a change as to the reconciliation year based on a change in the depreciation rates after the reconciliation year and in the filing year for rate-setting purposes.

A. ComEd's Depreciation Calculation was Litigated and then Agreed To in Its Initial Formula Case, ICC Docket No. 11-0721

ComEd's Commission-established rate formula calculates depreciation for the Initial Rate Year revenue requirement different than depreciation for the reconciliation revenue requirement. Brinkman Dir., ComEd Ex. 1.0, at 14-15. To the extent ComEd has updated depreciation rates

for the initial year, as a result of an updated depreciation study that is performed once every five years and that is filed after the reconciliation year (and thus not reflected in the FERC Form 1 for the reconciliation year)⁸, ComEd reflects those new rates in relation to projected plant additions for the Initial Rate Year revenue requirement. In fact, in doing so, ComEd calculates the depreciation for the Initial Rate Year based upon the methodology agreed to by ComEd and Staff in ICC Docket No. 11-0721. That proceeding included a well-vetted agreement between ComEd and Staff witnesses, which can be summarized as follows:

- In ComEd's direct testimony in ICC Docket No. 11-0721, the initial proposal to calculate projected depreciation expense in the formula was to apply depreciation rates to the total projected plant additions without the use of weighting (ICC Docket No. 11-0721, ComEd Ex. 4.1, App 8);
- In Staff direct testimony, a recommendation was made to use "average" plant additions to calculate the projected depreciation expense (ICC Docket No. 11-0721, Bridal Direct, Staff Ex. 5.0, 6:116);
- In response to this proposed adjustment, ComEd provided an alternative calculation for App 8 in rebuttal testimony in that proceeding (ComEd Ex. 12.5) to address the concerns of Staff. ComEd Ex. 12.5 included the weighting of the plant additions taking the rate year additions and the forecasted additions and dividing by two (2);
- Staff, in their rebuttal testimony, agreed to this calculation of depreciation expense;

⁸ In ICC Docket No. 07-0566, the Commission ordered, at Staff's recommendation, that ComEd complete a depreciation study every **five** years (*Commonwealth Edison Co.*, ICC Docket No. 07-0566 (Order September 10, 2008) at 235).

- ComEd further agreed with Staff to adjust the proposed method of calculating depreciation on the projected plant additions as originally presented in ComEd Ex. 12.5 to include a footnote to indicate that if FERC Form 1 depreciation rates are different from the most recent depreciation study, then the rates from the most recent depreciation study will be applied to the projected plant additions. *See* ComEd Ex. 13.01, App 8 in the current FRU proceeding, ICC Docket No. 14-0312, for this footnote. Staff's Initial Brief in ICC Docket No. 11-0721 also acknowledged the acceptance of the updated ComEd Ex. 12.5 and included the formula with footnote.

Brinkman Dir., ComEd Ex. 1.0, at 14-15; *see also* Brinkman Reb., ComEd Ex. 2.0, at 17-19. Given Staff's (Mr. Bridal's) agreement with ComEd in ICC Docket No. 11-0721, it is troubling that in ComEd's current FRU proceeding, ICC Docket No. 14-0312, Staff (Ms. Ebrey) proposes to use an alternate calculation to derive the projected depreciation expense for the Initial Rate Year.

The crux of the issue in ICC Docket No. 11-0721 involved projected depreciation, and as discussed in ComEd witness Brinkman's testimony, ComEd's position was fully vetted and agreed to by Staff (Mr. Bridal) not only in testimony but in Staff's Initial Brief, which cited the exhibit containing the calculation that both Staff and ComEd agreed to. Brinkman Reb., ComEd Ex. 2.0, at 17-18. Ms. Ebrey was a witness in ICC Docket No. 11-0721 and presumably knew that that was the docket to establish the formula rate structure. The mere fact that depreciation rates, an input, have changed should not be reason for the entire calculation of the Initial Rate Year projected depreciation to change.

Further, Ms. Ebrey appears to introduce a new element to the calculation by removing the use of weighted average additions in the calculation of projected depreciation and basing the

calculation on year end projections. ComEd has used weighted additions in the calculation of projected depreciation in the last two formula rate update proceedings with no challenge from any party. The updated depreciation study does not change that calculation. (Brinkman Reb., ComEd Ex. 2.0 17:381-383). It is precisely this back and forth – what is acceptable and agreed to one year is challenged or rejected the next year – that EIMA was intended to eliminate.

B. Staff's Proposed Adjustment Is Unnecessary as it is an Estimate and the Actual Depreciation Will Be Reconciled in Any Event

Projected depreciation expense is only one input of many into the total revenue requirement calculation. The formula rate uses FERC Form 1 balances for both the reconciliation and Initial Rate Year calculations (with limited exceptions directed by the statute or by the Commission) with a later reconciliation as to the rate year (the year in which the rates being set are in effect) for those amounts that are under- or over-collected. Considering the infrequency of depreciation rate adjustments, the impact to the already approved formula structure, and the fact that the Initial Rate Year calculation is an estimate that will ultimately be reconciled in any event, it is unnecessary to change the calculation of depreciation expense related to the Initial Rate Year as Staff now proposes. Brinkman Dir., ComEd Ex. 1.0, at 19.

Further, Ms. Ebrey's proposed adjustment requires a tariff change as it effects a change to Sch FR A-1 (related to transportation equipment). So, even under Staff's legal theory, the Staff proposal can be considered only in an Article IX Docket. Ms. Ebrey compares ComEd's calculation to Ameren's, stating that they are the same. Staff Ex. 1.0, 13:307-314. However, it appears that Ameren only reflected the changes in depreciation expense (and resulting changes to Accumulated Depreciation and Accumulated Deferred Income Taxes ("ADIT")), not changes to Distribution expense, in its formula rate changes. These changes to Distribution expense arise from depreciation expense changes related to transportation equipment, which drives changes to

Sch FR A-1 and the tariff. Therefore, it appears that Ms. Ebrey advocates for what she sees as theoretical precision but her proposal stops short of a complete acknowledgment of the total impact of the depreciation rate change. A full reflection of her proposed depreciation rate change would affect one of the Schedules that even Staff agrees may be changed only in an Article IX docket. Brinkman Reb., ComEd Ex. 2.0, at 14; *see also* ComEd Cross Ex. 1, DR – ComEd → Staff 1.06.

Ms. Ebrey's position fails to reflect that in order to correctly and fully apply her proposed adjustment, as it would actually appear on ComEd's books, the revenue requirement on Sch FR A-1 would require an adjustment to Distribution expense, which would make the amount different than is reflected on Sch FR A-1 REC. Brinkman Reb., ComEd Ex. 2.0, at 15. In fact, no matter how you adjust other Schedules and Appendices in the formula, including Sch FR C-1 and App 7, to adjust for a change in Distribution expense so that the amount recorded is different on Sch FR A-1 and Sch FR A-1 REC, a change to Sch FR A-1 would be necessary. *Id.* at 15-16.

To be clear, ComEd does not favor Ms. Ebrey's proposed adjustment under any scenario. This calculation has been established, is an estimate as is Ms. Ebrey's proposal, and there is no reason to change it now. Any increase or decrease to a reconciliation amount will have an impact on interest; however, the mere fact that interest is calculated on a revenue requirement including estimated depreciation is not harmful to customers. Brinkman Dir., ComEd Ex. 1.0, at 16. In other words, no matter whether the estimate is slightly higher or slightly lower, customers only pay interest on the reconciliation balance resulting from that specific estimate. Customers will not pay too much interest or too little, regardless of whether the depreciation rate adjustment is done now or at the time of reconciliation. If the estimate is low, the eventual reconciliation balance will be greater. Customers will pay more interest, but they will also pay

lower initial rates and gain the benefit of the use of those funds pending reconciliation. If the estimate is higher, more costs are recovered up front, but the reconciliation balance and any interest will necessarily be reduced. Also, to the extent there is any over-recovery, ComEd pays interest to customers on that over-recovery. Brinkman Dir., ComEd Ex. 1.0, at 16-17.

In sum, the current methodology used to calculate projected depreciation expense should continue to be used in ComEd's formula rate update cases. The current methodology of calculating projected depreciation expense for the Initial Rate Year is just that, a projection. Any other methodology would similarly be a projection as the actual data is not available. The Initial Rate Year revenue requirement will be reconciled using actual FERC Form 1 data for that year. Brinkman Reb., ComEd Ex 2.0, at 16; *see also* ComEd Cross Ex. 1, DR – ComEd → Staff 1.05. Further, ComEd performs depreciation studies once every five years, thus ComEd depreciation rates will more often than not be the same for the Reconciliation Year as well as the Initial Rate Year. This calculation was litigated in ICC Docket No. 11-0721 and a methodology was agreed upon. There is no need to change this calculation now.

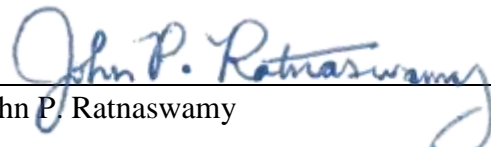
IV. CONCLUSION

For all reasons appearing of record and herein, ComEd respectfully requests that the Commission enter an order (1) finding that ComEd's formula rate structure consists of Sch FR A-1 and Sch FR A-1 REC, along with the other Schedules and Appendices expressly incorporated by reference in Rate DSPP; and (2) approving ComEd's continued use of its current Commission-approved methodology to calculate projected depreciation in ComEd's formula update cases.

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Respectfully submitted,

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